

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION

Call to Order: By **SEN. REINY JABS**, on January 13, 1999 at 3:00 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Reiny Jabs, Chairman (R)
Sen. Walter McNutt, Vice Chairman (R)
Sen. Ric Holden (R)
Sen. Tom A. Beck (R)
Sen. Gerry Devlin (R)
Sen. Pete Ekegren (R)
Sen. Mike Halligan (D)
Sen. Greg Jergeson (D)
Sen. Jon Tester (D)
Sen. Linda Nelson (D)

Members Excused: Sen. Pete Ekegren (R)

Members Absent: None.

Staff Present: Doug Sternberg, Legislative Branch
Carol Masolo, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:
Executive Action: SB 7 and SB 18

Committee Discussion

SENATOR MESAROS had questions on CI-75 and it's applications to **SB 18**. He has been approached by individuals that are of the opinion that we may need to submit a stand alone piece of legislation and asked legislative council about CI-75 ramifications. It was indicated at last meeting that wasn't necessary.

Doug Sternberg answered that's one of the beauties of CI-75. We all get to be constitutional lawyers and interpret it absent any definitive decision by the Supreme Court as to it's interpretation and applicability. Doug was involved in a conference call with Director Peck and Tim Meloy of the Dept. of Agriculture and talked to Director Petesch.

Doug indicated that because the assessment being charged under **Senate Bill 18** is a financial charge imposed by a governmental unit and from which the revenue accrues to the government, it would be subject to a subsequent public vote even beyond the referendum measure that's included for establishing self assessment by the people themselves.

Probably a specific separate measure to establish a referendum process that would allow this to be presented should SB 18 proceed on it's way successfully through the process, is a good idea. Otherwise it would require producers who develop an assessment during an interim period to wait until the legislature came back in 2001 in order to put that measure in a referendum form that could be submitted.

SENATOR MESAROS Can a piece of legislation be crafted as somewhat generic for any commodity group that petitions the Dept., or does it have to be specific to the hay or canola producers or whatever.

Doug Sternberg Length of the title of the ballot issue is limited to 25 words. The ballot issue would need to indicate the specific amount that's being assessed under the terms of a new tax or a tax increase. The amount of the increase has to be clearly indicated in the referendum.

SENATOR MESAROS After we go home, what happens? Do they have to wait until the next legislature?

Doug Sternberg Without a specific vehicle in place, that's basically what would happen. **SB 18** is crafted as an implementing bill that basically allows the process to be put in statute and for that process to go ahead. Once it's on the books, the individual producers can figure out the fee amount and the Dept. seeks out the producers. It's all under referendum form itself for the producers, anyway. The self assessment is all there. **Senate Bill 18** itself doesn't set a fee, doesn't impose a fee, doesn't increase a fee, and so there's no referendum language necessary for **SB 18** itself. It just sets up the process where a fee, somewhere down the line, if in fact this process is entered into by the producers, is allowed to happen.

As far as a generic, the way the Constitutional measure reads, each ballot issue shall encompass only a single tax and shall not encompass a general waiver or delegation of approval for a future taxing power. This one has a number of different potential taxes. It's drafted in a generic form but for a number of different percentages of gross purchase price of certain commodities, 100% weight of other commodities, etc. In my opinion it's questionable whether a generic ballot form would work in this case, because of the Constitutional requirement that each ballot issue encompasses only a single tax.

SENATOR MESAROS If I understand correctly, the different commodities would have to submit a bill. If they want to do it this interim, they would have to do this immediately to get in the process.

SENATOR DEVLIN One issue on each?

Doug Sternberg Each ballot issue shall encompass only a single tax.

SENATOR DEVLIN You're saying **SB 18** doesn't need it, but whatever comes out of **SB 18** does. Who gets to vote? The general public? Say I want to put something on here about peas. Who gets to vote on that.

Doug Sternberg The public. That was my specific question to Mr. Petich. Because it's a state administered program and money accrues directly to the state, the question is for the voters, shall commodities be assessed 1% of 100 or whatever.

CHAIRMAN JABS That's contrary to what was stated. Director Peck stated that only producers would vote on it.

SENATOR JERGESON What happens to the Wheat & Barley Commission if they have a year when yields are down and the assessment does not raise enough revenue. In the past they've then raised the assessment to raise that revenue. Would CI-75 apply in that case. I was advised probably not, because of the refund provision in that statute, the producer can get his money back, so it's really a voluntary assessment. Therefore it wouldn't be considered a taxer fee under the terms of CI-75. Might that be a way out of the dilemma on this, by putting a refund provision in here.

Doug Sternberg The voluntariness is only one aspect and the way the Constitution reads is that tax means financial charge, however denominated and imposed by a governmental entity by which revenue accrues to government other than, and this is the phrase

I think you were talking about, a price in a voluntary transaction in a competitive market where the item for which the price is being imposed is not monopolized by government, including educational tuition. In this case, the wheat and barley folks, the price being imposed is in fact monopolized by government, whether it's entered into voluntarily and the revenue does accrue to the state.

SENATOR JERGESON You have marketing efforts by private associations like grain growers, you have businesses that do marketing functions for producers and are paid a fee for that. I don't see any monopolization at all in marketing function.

SENATOR DEVLIN We find out after it gets taken to court.

Doug Sternberg Unfortunately that appears to be the way we're headed. While there's certainly no indication about how the Supreme Court will hold on this, at least it appears they have put it on a fast track and will have some decision relatively soon, relatively for the court anyway.

SENATOR JERGESON Whatever we do, this bill has nasty hoops to jump through for anybody to get one of these established. I'm almost inclined to think we ought to put that refund provision in it, hang our hat on the voluntary provision and find out if somebody wants to test it. If they don't test it, we proceed and if they do test it, then we know where we have to go. I don't think we'll be very much behind where we would be by trying to figure out some way to stick all this information on a ballot and have everybody in the state vote on it.

SENATOR NELSON The refund provision is in the bill. Consider the Wheat and Barley Committee was going to assess a penny a bushel. Should they be allowed to do that? This went out to everybody and everybody voted they should be. Then in turn, could the Wheat and Barley Committee poll their members to see if they wanted to do that? It would just be giving the particular entity the go ahead to poll their members and go ahead with the referendum.

CHAIRMAN JABS Seems to me it would be 2 votes then.

SENATOR NELSON When you poll your own members it's not a great big public election. You probably would vote to assess yourself and the public would may be more apt to vote for giving you permission to assess yourself, than they would to say, heck, I don't know anything about wheat. I'm going to vote no.

Doug Sternberg The referendum basically says it's framed in two contexts. If it's a new tax, "shall a new tax as follows be imposed" or "shall such and such tax be increased annually by an amount in the following manner". We've been provided with that specific referendum language in order for it to be a valid referendum. It has to be in the context of one or the other of those frameworks. There has been a number of complications that have come up, for instance, in the extension of an already existing tax, which is also covered. An extension of an existing tax is also subject to a public vote. It's not a new tax so we can't use the language "shall a new tax be imposed" and in this case, it's another Dept. bill that basically extends a present tax but it doesn't increase it. There's no increase there, it simply extends it, but that also under CI-75 is subject to a vote and then you have to put, "shall it be increased in the amount of -0-", because it's not even an increase.

Because of the underlying directive in the Constitution that extended taxes also have to be subject to a public vote and limit between the two kinds of referendum language, we have to put an extended tax under the context of a tax increase. The whole thing is sadly convoluted and the voters are the ones that ultimately are going to have to figure it out.

{Tape : 1; Side : A; Approx. Time: 3:17}

EXECUTIVE ACTION ON SB 7

CHAIRMAN JABS This puts a minimum on a state bid if they bid over the normal 1/3 crop share.

SENATOR HOLDEN asked to move his amendment to **SB 7**. The bill as it's presented provides no safeguards in the case of a natural disaster or drought. This amendment allows people in this financial arrangement with the state a way out if their county is declared a natural disaster area. Currently, if there's no crop, you pay the state zero. This keeps our producers from being strapped with payments they can't make or have difficulty making due to poor weather or other occurrences. This has to go through the whole procedure to declare a county a natural disaster area, County Commissioners, the Governor and also the Federal Government. **SEE EXHIBIT (ags09a01)**

SENATOR MESAROS If I establish a private lease, it doesn't make any difference if there's a disaster or not, I still have to pay. There's crop insurance available for producers in any area. Why put this on state land when private lease producers are at risk anyhow.

SENATOR HOLDEN In a private lease situation, many times you're dealing with a former producer who has an understanding of crop conditions and they are willing to negotiate crop lease arrangements. They understand your plight. The way the bill is written the producer would be strictly held to the cash arrangement. It's tough for one person to negotiate with the Department for a lessening of a lease they owe. With a private lease, you can negotiate with the person face to face and come to some sort of agreement.

SENATOR MESAROS Most of the leases I'm associated with, you sign a lease agreement and you're held to that, regardless. There isn't much negotiating if you're at the mercy of a disaster.

SENATOR JERGENSEN I'm trying to recall the fast disaster declaration that involves county commissioners, the governor and federal government. Can an area within a county be declared a disaster area. When the Milk River floods, Mark Peterson north of Havre, and my brother south of Chinook, both get a nice shower. The Milk River valley was a disaster area but large portions of the counties along the Milk River are not. How is that disaster area declared. Does the DNRC know?

SENATOR HOLDEN I think you're right. The whole county had to be declared a disaster in Dawson County. Your whole county is either in or out.

SENATOR DEVLIN The County Commissioners of each county petition and the governor declares the whole county, not portions of the county. You could have a situation where you could have pretty good crops on this edge of the county and this other edge is either completely hopped out or dried out.

CHAIRMAN JABS We had the same thing in Big Horn. In one part we had good crops and hail storms go through one area. If you own the land, you take the chances. Who is going to compensate me if I don't get a crop on my deeded land? As **SENATOR MESAROS** says, there is insurance where you average out your crop. You have a yield set in acres and if you don't reach a certain average, you take insurance for that. You can insure yourself.

SENATOR BECK You made the statement yourself that a lot of private leases are negotiable. Substitute the word void with negotiable. The \$15/acre fee is negotiable and the lease must be reconfigured on a crop share basis. Declaring it void, which could involve the entire county if only a portion is affected, would be quite a cost to where this money goes to, and that's probably the school equalization program. You're liable to get a lot of opposition on the Floor.

{Tape : 1; Side : A; Approx. Time: 3:28}

SENATOR HOLDEN There are two places I think this amendment should be changed then. First of all I would revise my motion to say that subsequently declared a disaster county, instead of the word area. I would take **SENATOR BECK's** suggestion to change the word void to negotiable. "Must" would have to be changed to "may".

CHAIRMAN JABS When people go over the normal accepted rate, they take a chance. If they bid over 50% they should realize they take the chance and accept the consequences.

SENATOR HOLDEN We're set up on a crop share basis now. It's not like the state isn't going to realize some cash gains by your piece of legislation by going with the minimum rate. It's just going back to the way they always figured it. It's so rare that you would have a natural disaster county in your area. I support the farmers and ranchers that are trying to make a go of it.

I can't set public policy on everybody's piece of private ground, but I do have the opportunity to have some input into what state government's public policy is and how they're going to treat producers in Montana. I'm just trying to give them a protection clause in those rare occurrences when you have a natural disaster.

SENATOR BECK Jeff wants to make sure this is crop related and that's your intent, correct?

SENATOR HOLDEN It is crop.

SENATOR BECK He wants to make sure this is not permanent and only for the year the disaster declared.

SENATOR HOLDEN That would be my intention.

DOUG STERNBERG That's a good thing to have clear in there. A farmer is entered into a 10 year lease and he's in the second year. The lease was figured on \$15/acre for the entire term of the lease. If there's a disaster that occurs in the second year, the crop share basis suddenly does not apply to the remaining 8 years of the lease.

CHAIRMAN JABS Generally, you have a summer fallow, crop one year and then summer fallow, and you pay \$15 every year. If there's a disaster on the summer fallow year, you don't have a disaster.

SENATOR HOLDEN That's why the word negotiable is there.

CHAIRMAN JABS Shouldn't negotiate. You wouldn't expect a crop that year and therefore you should pay the \$15.

SENATOR HOLDEN Under the negotiation process, if you were to try to claim that to the Department, you should have good reason why you thought you should have anything coming back.

CHAIRMAN JABS I don't think you should put the state through the burden of negotiating when they knew there wasn't a crop. You're making extra work for the state to make a decision on years of summer fallow.

SENATOR TESTER I speak in opposition to this amendment because of many of the reasons that were mentioned before. I think there are some advantages for getting that lease with state land in the negotiation process that aren't there in private lands. I think overall generally it could be pretty well verified that private land leases run higher than state leases. With this amendment, I think we're going to create some expense in the negotiation process.

SENATOR DEVLIN Is this \$15 for the summer fallow acres?

CHAIRMAN JABS Per year. Every year you pay \$15/acre.

SENATOR DEVLIN Got pretty greedy.

SENATOR TESTER Remember what kicks in this \$15/acre though. That is the bidder that bids the land up over 33-1/3%. The person that does that goes in with their eyes open. They are not only jacking that bid up but also assuring the state they will guarantee \$15/acre. I think it adds responsibility for irresponsible bids.

SENATOR DEVLIN There is a mechanism where irresponsible bidding can be readjusted through the Land Board in the field.

SENATOR BECK The landholder has the right to meet that bid. I've never seen it yet that the leaseholder doesn't have the right of first refusal. Then he has the right to go back and renegotiate with the state.

Jeff Hagener That is correct in a situation where it's a regular lease. But, if it's an open or vacant tract, we don't currently have a lessee on, we put that for open competitive bidding and it goes to the high bidder. There's no negotiation.

SENATOR BECK You don't have too much of that though, Jeff. There's some state land I'm sure you can't get a bid on. On most of the land that's bid for grazing, most of them would come back with the right of first refusal and then negotiate with you because someone jacked the bid sky high.

Jeff Hagener That is the common case of renewals, yes, and is the majority of what we deal with.

CHAIRMAN JABS I've got the lease. If I bid a third and a fellow bids 49%, can I negotiate it back to 30% or do I fall under the \$15/acre minimum.

Jeff Hagener If you are the lessee, then you have the right to meet that high bid. You also have the right to request a hearing before our Director to discuss that. He would consider all aspects of it and he may give a lowering. It's not a set in concrete type deal.

CHAIRMAN JABS Where did the \$15 come from? That's the average they get per year.

SENATOR DEVLIN I was under the impression it was on the crop land only. I didn't think it would affect summer fallow land. I leased from what used to be Burlington Northern Lands. You didn't pay for the summer fallow, you paid the crop share. But you didn't pay them a cash lease on the summer fallow.

CHAIRMAN JABS Right. But you had enough from the crop share to make up for other years. If you bid crop share you pay every other year. But if you go to this cash lease, you pay every year. Most cash leases at home, you pay every year whether you farm it or not. We pay our water if we irrigate, too.

{Tape : 1; Side : A; Approx. Time: 3:37}

SENATOR NELSON Question on the amendment.

Doug Sternberg Point of clarification here just so we all know what we're voting on: where it says "the guarantee is void" would be "the guarantee is negotiable". And the lease not "must" but "may" be declared a disaster county. Then the \$15/acre guarantee is negotiable and the lease may be reconfigured on a crop share basis for the year in which the disaster was declared.

Motion/Vote: **SEN. HOLDEN** moved that **AMENDMENT BE ADOPTED. Motion failed 4-5. SENATORS MCNUTT, BECK, DEVLIN and HOLDEN** voted yes.

CHAIRMAN JABS Two absent members.

SENATOR HOLDEN requested the vote be held open.

Discussion among committee members concerning holding the vote open. This is a decision for the Chairman of the Committee and he makes the decision whether to hold it open or not.

SENATOR BECK thought it should be held open so everyone had a chance to vote. It's only fair when there's something that close, to give the other two an opportunity.

SENATOR NELSON would just remind the committee that we're coming up with her bill which has a number of amendments on it. Are we going to hold those all open if they're close? This was announced as an Executive Session for these bills.

SENATOR JERGESON It seems that last session we adopted a procedure where committees were given a number of scenarios on how to handle this thing and how you might take a vote in absentia. We might have to look at that.

I think I might have come up with an amendment that deals with this issue of summer fallow and may relieve some people's concerns. On page 2, line 2, following \$15.00, I'd strike "an acre" and insert "for each acre on which crop share is calculated". In your traditional summer fallow rotation you calculate your crop share on the crop you raise in that particular year. If you're continuous cropping or if you're in some other situation where you crop annually, then your crop share is based on the annual crop.

CHAIRMAN JABS They would only pay \$15 the year they have a crop?

SENATOR JERGESON They would pay \$15/acre on acres on which they planted a crop. The producing acres.

CHAIRMAN JABS They would only be getting half the average so they would be better off to bid 50% because they'd only have to pay every other year. You're getting less money than you were before. On a crop share, you pay your crop share on the year you have a crop but it averages out to \$15 a year, although they're making \$30 the year they have a crop and nothing the next year but state average is \$15 per year.

SENATOR JERGESON If you have a typical 20 bushel crop and you bid and at \$2.50 wheat, that's \$50 an acre and you bid 40%, that's the \$20 you get off the acres of crop raised. If you're going to claim that your crop didn't yield well enough or prices were low, you'd at least have to cover \$15 for that acre you raised crop on.

CHAIRMAN JABS If that's the case you're better off killing the whole bill because we're going to lose money, aren't we.

SENATOR TESTOR I don't think so, because it's what the grader is, \$15 or 1/3 share. Fifteen dollars would be the minimum and if they got a 30 - 40 bushel crop, of course you'd take the 1/3.

SENATOR BECK would like Jeff to come back up and explain that amendment.

{Tape : 1; Side : A; Approx. Time: 3:44}

Jeff Hagener When I said \$15 per acre, that is our overall average across the state. Half our acreage every year is in summer fallow. The true rate we're getting is close to \$30/acre on a cropped acre. If this were to put it down, it would be a loss from what we're getting right now.

SENATOR DEVLIN I thought you testified the other day that your average was a little better than \$15/acre... **Turned Tape**

Jeff Hagener All agriculture acres we have under lease, including summer fallow, if you look at just strictly dry land grain, average at 26%. Over the whole state we have a 26% crop share average, about \$14.60 per acre regardless whether it's summer fallow or crop. That's on all acres.

SENATOR JERGESON This whole business of averages makes me nervous. Within a county you can have variations. It just doesn't matter how well a producer manages, if you're in an area with poor soils and moisture pattern, you'll be one of those guys with your own average production that is down there. There are areas in a county that would be above the average. Statewide the variation can be extremely awesome.

SENATOR NELSON I have a lot of state land up in my area and I haven't heard a word from those people. I guess I'm a little surprised because they usually monitor this information pretty closely. If they've got a problem with it we'll soon be hearing and there will be time to do some correcting.

SENATOR DEVLIN Might have to correct it in the House and they might not be as amiable in corrections as the Senate.

{Tape : 1; Side : B; Approx. Time: 3:47}

CHAIRMAN JABS I asked twice if they weren't a little low at \$15 and should have it around \$17 or \$18. They turned me down.

In my area, we had a farmer come in, bid high, messed the whole thing up, was there for 4 years, went broke and left. This might slow some of that down. Since this is probably going to be argued in the House, I'll just hold it open.

Doug Sternberg I'll prepare the Holden amendment in the form we discussed so our absent members have an idea exactly what we voted on.

SENATOR HOLDEN We need to finalize our decision on **SENATOR JERGESON's** amendment now.

SENATOR JERGESON I'm going to offer my amendment. I suspect if some of my folks on state land, where it is typically summer fallow rotation, have a look at this they're going to say "well, we pay a crop share and make our bid based on a crop share but it's based on a summer fallow rotation and that's how the cash rent also ought to apply, on that which is put into crop."

CHAIRMAN JABS You're asking people to bid a little on the shady side with this. In your amendment, I can get it cheaper by bidding 50% and only give them \$15 a year.

SENATOR DEVLIN You'd have to give them the share.

CHAIRMAN JABS How can the state prove they were given the share? This is a "trust me" deal. How is the state going to be sure he's going to put all the grain that came from this field in the right granary or the right elevator.

SENATOR DEVLIN Without a group of inspectors in the field, an inspector in every county, that is going to be left up to the individual farmer to turn in correct figures. That's the way it's always been.

SENATOR MESAROS Question on **SENATOR JERGESON's** amendment.

Doug Sternberg Just as a clarification for me, after \$15.00 on line 2, strike "an acre" and insert "for each acre on which a crop share is calculated".

{Tape : 1; Side : B; Approx. Time : 3.52}

SENATOR JERGESON If you want a dollar amount that applies so it's a disincentive to the spite bids or other things, then you would raise that dollar amount from \$15 to some other number. I really think you ought to stay consistent with cropping patterns and I'd be open to changing that \$15 to \$30, but I think you have to apply the dollar amount to how that crop is typically raised.

CHAIRMAN JABS That would be more palatable to raise the amount if you only have it on a crop year . Then the state is going to have the money on an average. The reason for this bill, **SENATOR DEVLIN**, is to try to keep the state from having to do this work, of making sure people who are bidding 50% pay their share without having a guy standing on a combine watching.

SENATOR MESAROS has called for the question on the language on the crop land.

SENATOR HOLDEN Let's have a roll call vote.

Roll Call Vote

Motion/Vote: **SEN. MESAROS** moved that **JERGENSIN'S AMENDMENT BE ADOPTED**. Motion failed 3-6 with Devlin, Holden and Jergeson voting aye.

SENATOR DEVLIN If I get this right, you're going to hold the vote open on the amendment until the other two are able to vote.

SENATOR JERGESON In the future, when you've announced there will be Executive Action, and someone is going to be absent, they should leave a proxy with another member so we can dispose of amendments. If a bill is voted on and they haven't left a proxy or the person left holding the proxy would be uncomfortable casting their proxy because the amendments have changed the nature of the bill, you would hold open the vote on the bill.

CHAIRMAN JABS Point taken. It was announced last meeting and on the Floor today as Executive Session. With the committee's approval, let's vote on the bill.

Motion/Vote: **SEN. TESTER** moved that **SB 7 DO PASS**. Motion carried 8-1 with Devlin voting no.

{Tape : 1; Side : B; Approx. Time: 4:01}

EXECUTIVE ACTION ON SB 18

Doug Sternberg 1 amendment presented when bill submitted. I made fresh copies of amendment 1801. Proposed by John Bloomquist and included 4-H livestock. **EXHIBIT (ags09a02)**

Motion/Vote: **SEN. NELSON MOVED THE AMENDMENT TO SB 18**. Motion carried unanimously.

Doug Sternberg Amendment 1802, prepared on behalf of **SENATOR NELSON**. The Department offered these amendments.

EXHIBIT (ags09a03)

Motion/Vote: **SEN. NELSON** moved that **AMENDMENT 1802 TO SB 18 BE ADOPTED**. Motion carried unanimously.

Doug Sternberg Amendment 1803 is offered as part of **SENATOR TESTER's** testimony on the bill. This sets up process of commodity checkoffs which would relate to organic crops. **SEE EXHIBIT (ags09a04)**

SENATOR TESTER The reason we tried to include this in this bill is because of the immense legislation this year. If we could incorporate this into this bill it would kill two birds with one stone and allow us to have enabling legislation even though we may not be using it. I'm going to pull these amendments, because it expands the bill beyond its original concepts. We'll present these it back through in a bill in and of itself.

SENATOR JERGENSON I think there is a process to certify weed seed free hay. My suggestion would be that you have this cover a variety of things that we might say are Montana certified, Montana certified organics, Montana certified weed seed free hay, etc.

SENATOR DEVLIN There are so many terminologies in this that I realize aren't in the laws at all, in our statute, so it makes it really tough not to have a completely new bill. Rather than kill two birds with one stone, I think you'll just kill the bill with one stone.

SENATOR TESTER I understand that. I withdraw these amendments.

Doug Sternberg On behalf of **SENATOR HOLDEN**, amendment 1804. **SEE EXHIBIT (ags09a05)**

SENATOR HOLDEN Move amendment 1 on page 7. The problem we would get into without this amendment is people marketing directly to foreign countries and not contributing to a voluntary checkoff. You could make marketing decisions and contracts to foreigners on the basis of evading a checkoff. Also southern Montana has a lot of groups that grow alternative crops. They are the ones that wanted the checkoff, not for commodity promotion so much as for research. If you've got producers in the northern half of Montana that are contracting with Canada, they're not necessarily going to want to pitch in. This requires the producer to make good faith effort to be sure that these checkoff dollars are sent to the state.

SENATOR DEVLIN You talk about foreign entity. Are you just talking about foreign country, or a foreign state?

SENATOR HOLDEN I'm talking about a foreign business with whom you contract.

SENATOR MCNUTT If the transaction is not conducted within the state, you have no mechanism to collect the checkoff, so foreign entity would be out of state.

SENATOR HOLDEN I think that's the problem with this whole bill entirely. When we had a nation wide checkoff program, I could take my wool to South Dakota, sell it, they collected the checkoff dollars in South Dakota, or wherever I went. If we're going to set up a state-wide checkoff, we're going to have to describe some boundaries for the people who want this checkoff in the State of Montana. I'm just saying OK, you live in Montana and conceivably voted for it, so let's make sure these checkoff dollars come back to the State of Montana.

SENATOR DEVLIN If you didn't want that withheld, you didn't have to have it withheld.

SENATOR NELSON I believe that pretty much there are reciprocal agreements in most places to take off this checkoff. Mr. Keil indicated that in Canada they've already agreed to do this. If a producer supported this and thought the checkoff wasn't going to be sent in, they would be better off sending their money in themselves.

SENATOR MESAROS The language in the amendment "shall make good faith effort" does not mandate anything but puts some soft language in there to make that effort.

CHAIRMAN JABS Yes, they said the other day that can't force them to do it, they can ask them to do so voluntarily.

Motion/Vote: SEN. HOLDEN MOVED AMENDMENT 1 ON 1804. Motion carried with Jergeson voting no.

SENATOR HOLDEN I'd like to direct our attention to amendment #2. That's on page 8 of the bill. Having gone through a bloody battle in the sheep industry on this checkoff stuff and the whole issue of voluntary versus mandatory, Page 8 simply allows a little larger window for the opportunity to get back your checkoff dollars. There's a voluntary refund portion, section 5 line 21 of the bill. In the fall during harvest and marketing, you don't have a lot of time to do paperwork. **EXHIBIT (4)**

{Tape : 1; Side : B; Approx. Time: 4:23}

SENATOR DEVLIN It says between 30 and before 90 days now, so it looks to me like there are 120 days right now.

Doug Sternberg If you read the whole sentence, after 30 days and before 90 days following the deduction, seller may obtain a refund.

SENATOR DEVLIN So totally he has 120 days.

Doug Sternberg No, he has 60 within 90.

SENATOR JERGESON What is the time frame in the Wheat Commission?

SENATOR MCNUTT We don't harvest beets for 4 months. I would think it should parallel the Wheat and Barley dates.

SENATOR HOLDEN This piece of checkoff language is for every possible agriculture product we have in the State of Montana. You're only adding 30 more days. Let's don't blind ourselves into thinking that the checkoff has to parallel the Wheat and Barley committee.

SENATOR NELSON You know immediately, you support checkoff or don't. If you don't, I would think you'd be ready after 30 days.

TAPE ENDED, Recorder not started with new tape.

Question was called.

Motion/Vote: SEN. NELSON moved that **HOLDEN AMENDMENT 2 BE ADOPTED. Motion failed 1-9 with Holden voting aye.**

SENATOR HOLDEN Called on Ralph Peck regarding page 6, lines 1 through 7. The problem in the sheep industry was who gets how many votes, corporations versus families.

RALPH PECK The state was not involved in the sheep program. That was a national referendum.

SENATOR HOLDEN 4H kids with 1 sheep had 1 vote. Corporations with 1,000 sheep also had 1 vote.

SENATOR DEVLIN We could not take the 4H kids out of voting.

SENATOR TESTER commented that it should be left up to the individual groups to set up who votes.

SENATOR NELSON The bills states a voter should be 18 years of age minimum and a state resident, not national.

SENATOR DEVLIN There is a precedent for limiting allowing the number of votes. In some cases they do weight their votes.

SENATOR HOLDEN Where does it say producer group sets vote?

SENATOR HALLIGAN Page 6, line 2 says known growers and producers.

SENATOR NELSON moved the bill as amended.

SENATOR BECK I'm disgusted with the beef checkoff.

SENATOR NELSON I understand the frustration. It's up to the individuals to promote their product.

SENATOR DEVLIN Question

Motion/Vote: **SEN. NELSON MOVED SB 18 AS AMENDED. Motion carried with SENATOR BECK and SENATOR HOLDEN voting no.**

ADJOURNMENT

Adjournment: 4:35 P.M.

SEN. REINY JABS, Chairman

CAROL MASOLO, Secretary

RJ/CM

EXHIBIT (ags09aad)